

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of:	)	
	)	CG Docket No. 02-278
Petition for Waiver of	)	
USI, Inc.	)	CG Docket No. 05-338
	)	
	)	

**PETITION FOR RETROACTIVE WAIVER**

Pursuant to Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, and Paragraph 30 of the Commission’s Order, CG Docket Nos. 02-278, 05-338, FCC 14-164 (rel. Oct. 30, 2014) (“October 30 Order”), Petitioner USI, Inc. (“USI”) respectfully requests that the Commission grant a retroactive waiver of the opt-out notice requirement in Section 64.1200(a)(4)(iv) of the Commission’s rules, 47 C.F.R. § 64.1200(a)(4)(iv). In the October 30 Order, the Commission granted a retroactive waiver of Section 64.1200(a)(4)(iv) to a group of business-petitioners facing lawsuits that alleged, in part, that the businesses had violated that rule by failing to include specific opt-out language in their faxes even when the faxes were sent with the recipient’s prior express invitation or permission, in writing or otherwise. The Commission determined that, based on potential confusion surrounding the rule, good cause supported a retroactive waiver and that such a waiver was in the public interest. *See* 47 C.F.R. § 1.3; October 30 Order at ¶¶ 26-28.

USI is now in the same position as the petitioners to whom the Commission granted a retroactive waiver in the October 30 Order. USI faces a putative class action in the United States District Court for the District of Connecticut based, *inter alia*, on allegations that it violated the requirement in Section 64.1200(a)(4)(iv) that even solicited faxes must include the precise opt-out language specified in the Commission’s rules. *See* Compl., *P & S Printing LLC d/b/a/*

*Minuteman Press v. U S I, Inc. d/b/a USI, Inc.*, No. 3:14-cv-01893-WWE (D. Conn. filed Dec. 17, 2014) (“P & S Complaint”) (a true and correct copy is attached as Exhibit A). Like the petitioners in the October 30 Order, therefore, USI faces the prospect of potentially substantial liability for failing to include in solicited faxes the precise opt-out language required by the Commission’s rules, even though the Commission found that there was understandable confusion about the applicability of the requirement for that opt-out language. As a party similarly situated to those petitioners who have received the Commission’s waivers, USI now asks the Commission to grant it the same retroactive waiver of the same rule for the same reasons that supported a waiver in the October 30 Order.

## **I. BACKGROUND**

USI has remained a small private family-owned company since its founding in 1975. It sells commercial roll and pouch laminating machines and films, binding equipment and supplies to other businesses. Its offices are located in Madison, Connecticut.

### **A. The Telephone Consumer Protection Act And The Commission’s Regulations**

The Telephone Consumer Protection Act (“TCPA”) prohibits the use of any telephone facsimile machine, computer, or other device to send an “unsolicited advertisement” to a fax machine. 47 U.S.C. § 227(b)(1)(C). The TCPA was amended in 2005 by the Junk Fax Prevention Act (“JFPA”). *See* Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005). In relevant part, the JFPA codified an exception for companies that send fax advertisements to those with whom they have an “established business relationship.” *See* 47 U.S.C. § 227(b)(1)(C)(i).

The Commission amended the rules concerning fax transmissions to reflect the changes brought about by the JFPA. *See In re Rules and Regulations Implementing the Telephone*

*Consumer Protection Act of 1991*, Junk Fax Prevention Act of 2005, CG Docket Nos. 02-278, 05-338, Report and Order and Third Order on Reconsideration, 21 FCC Rcd. 3787 (2006) (“Junk Fax Order”). Particularly relevant here, the Junk Fax Order adopted a rule stating that a fax advertisement “sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice that complies with the requirements in paragraph (a)(4)(iii) of this section.” 47 C.F.R. § 64.1200(a)(4)(iv). At the same time, the Junk Fax Order explained in a footnote that “the opt-out notice requirement only applies to communications that constitute unsolicited advertisements.” Junk Fax Order, 21 FCC Rcd. at 3810 n.154 (emphasis added).

#### **B. The Commission’s Order Released On October 30, 2014**

After receiving numerous petitions challenging the application of the opt-out notice requirement to solicited faxes, the Commission issued an Order on October 30, 2014. The Commission recognized that the “inconsistent footnote” in the Junk Fax Order “caused confusion or misplaced confidence regarding the applicability of [the opt-out notice] requirement.” October 30 Order at ¶¶ 24, 28. The Commission explained that the footnote “may have caused some parties to misconstrue the Commission’s intent to apply the opt-out notice to fax ads sent with the prior express permission of the recipient.” *Id.* ¶ 24. In addition, the Commission acknowledged the “the lack of explicit notice” in the notice of proposed rulemaking that the Commission contemplated an opt-out requirement on fax ads sent with the prior express permission of the recipient also “may have contributed to confusion or misplaced confidence.” *Id.* ¶ 25. The Commission concluded that “this specific combination of factors presumptively establishes good cause for retroactive waiver of the rule.” *Id.* ¶ 26. The Commission also found “that granting a retroactive waiver would serve the public interest,” because failure to comply with the rule “could subject parties to potentially substantial damages” and the public interest

would not be served by imposing such damages for inadvertent failures to comply with a rule that was confusing. *Id.* ¶ 27.

In light of these findings, the Commission granted a retroactive waiver of Section 64.1200(a)(4)(iv) to those parties who had petitioned for such relief—namely, a group of petitioners composed of businesses “subject to . . . a lawsuit in which a class of plaintiffs seek monetary damages under section 227(b) for alleged violations of the opt-out notice requirement for faxes allegedly sent at the request of the recipient.” *Id.* ¶ 6; *see also id.* ¶ 29. The Commission stated that “[o]ther, similarly situated parties, may also seek waivers such as those granted in this Order” within six months from the date of the Order. *Id.* ¶ 30.

## **II. A RETROACTIVE WAIVER IS WARRANTED BECAUSE PETITIONER IS SIMILARLY SITUATED TO THE PARTIES WHO RECEIVED WAIVERS IN THE OCTOBER 30, 2014 ORDER.**

The Commission has the authority to grant a retroactive waiver of its rules pursuant to 47 C.F.R. § 1.3. Here, the Commission has already found that good cause exists for granting a retroactive waiver of Section 64.1200(a)(4)(iv) given confusion surrounding that rule and that the public interest warrants a waiver. USI is in the same position as the parties to whom the Commission granted a waiver, and USI is filing this Petition within six months of the release of the October 30 Order. Thus, a waiver is warranted here as well.

### **A. The Commission Has Already Found Good Cause For Granting A Retroactive Waiver In These Circumstances.**

Under section 1.3 of the Commission’s rules, the Commission may suspend, revoke, amend, or waive any of its rules at any time “for good cause shown.” 47 C.F.R. § 1.3; *see Nat’l Ass’n of Broadcasters v. FCC*, 569 F.3d 416, 426 (D.C. Cir. 2009). In addition to a showing of “good cause,” waiver also requires that the Commission find that a waiver would be in the public interest. *See* October 30 Order at ¶ 23; *AT&T Corp. v. FCC*, 448 F.3d 426, 433 (D.C. Cir. 2006).

As the Commission already found in its October 30 Order, both of these requirements are satisfied in the context of the rule applying the opt-out notice requirement to solicited faxes. *See* October 30 Order at ¶¶ 26-27.

Good cause has been established due to the inconsistent footnote in the Junk Fax Order. *Id.* ¶ 24. That footnote indicated that the opt-out notice requirement applies only to unsolicited advertisements. Junk Fax Order, 21 FCC Rcd. at 3810 n.154. This could reasonably be read to mean that a company like USI need not include an opt-out notice when sending advertisements to customers who have expressly agreed to receive the advertisements—that is, solicited faxes. *See* October 30 Order at ¶ 24. The Commission’s notice of proposed rulemaking also failed to provide explicit notice that the Commission was planning to require the opt-out notice for solicited faxes. *Id.* ¶ 26. As the Commission has already found, “this specific combination of factors presumptively establishes good cause for retroactive waiver of the rule.” *Id.*

Furthermore, “granting a retroactive waiver would serve the public interest.” *Id.* ¶ 27. Absent a waiver, companies like USI could be subjected to substantial monetary damages and forfeitures under the Communications Act for failing to comply with a rule that the Commission has already decided was the subject of confusion. *Id.* By granting a retroactive waiver, the Commission can ensure that any confusion as to the opt-out notice requirement does not result in the imposition of substantial fines for inadvertent violations. *Id.* The Commission itself has already explained that parties like USI need only show that they are “similarly situated” to the petitioners whose waiver petitions were granted to be entitled to a waiver. *Id.* ¶ 30.

**B. USI Is Similarly Situated To The Petitioners To Whom The Commission Has Granted Retroactive Waivers.**

USI is in the same position as the parties to whom the Commission already granted waivers. Like the petitioners who have already been granted waivers, USI is the target of a

putative class action lawsuit. *See* P & S Complaint. The lawsuit asserts the same causes of action against USI that were discussed in the Commission’s October 30 Order granting retroactive waivers. Plaintiff alleges that “fax advertisements [USI] sent [were] *solicited* and did not contain a notice satisfying the requirements of the TCPA and regulations thereunder.” *Id.* ¶ 34 (emphasis added); *see id.* ¶ 2 (“[USI] has . . . sent . . . over five thousand (5,000) unsolicited and *solicited* fax advertisements for goods and/or services without proper opt-out notices . . . ; [and, as] a result, [USI] is liable to Plaintiff and the proposed Classes . . . under the TCPA”) (emphasis added); *see also id.* ¶¶ 13, 15, 19, 22, 26. For the more than five thousand alleged violations of 47 U.S.C. § 227(b), Plaintiff seeks an award of “statutory damages under 47 U.S.C. § 227(b) in an amount greater than two million, five hundred thousand dollars. *Id.* ¶¶ 34-35. Plaintiff’s complaint also specifically requests the establishment of a class composed of recipients of at least “one solicited or unsolicited facsimile” that lacked an adequate opt-out notice. *Id.* ¶ 19. In short, Plaintiff’s lawsuit subjects USI to potentially substantial liability based on the requirement of Section 64.1200(a)(4)(iv) that even solicited faxes must contain the opt-out notice with the specific language as defined in the Commission’s rules. USI did not understand that it needed to comply with the opt-out notice requirement for solicited faxed advertisements. As a result, USI is in the same position as the petitioners in the October 30 Order.

USI is in the same position as the parties to whom the Commission already granted waivers for another reason. Plaintiff alleges that *unsolicited* faxes sent by USI also did not contain proper out-opt notices under the TCPA and regulations. *See* P & S Complaint ¶¶ 13, 19, 27-28, 34, 38. Plaintiff seeks an award on this basis as well. *See id.* ¶¶ 19, 27, 34, 38-39. USI, however, intends to demonstrate that purportedly unsolicited faxes were in fact sent with the prior express permission or invitation of the recipients. Accordingly, for such allegedly

*unsolicited* faxes that USI establishes were in fact *solicited*, Plaintiff will be subject to potentially substantial liability based again on the requirement of Section 64.1200(a)(4)(iv) that solicited faxes must contain the opt-out notice with the specific language as defined in the Commission's rules. For this reason as well, USI is in the substantively same position as the petitioners in the October 30 Order.

As the Commission has already held, good cause exists for a waiver in these circumstances because the contradictory footnote in the Junk Fax Order reasonably caused confusion about whether the opt-out notice requirement applied to solicited faxes. Similarly, subjecting USI to substantial monetary damages in these circumstances would not serve the public interest. *See* October 30 Order at ¶ 27. The TCPA and the Commission's implementing rules are generally intended "to allow consumers to stop unwanted faxes." Junk Fax Order, 21 FCC Rcd. at 3812. But that purpose would not be served by imposing potentially massive penalties on a company like USI for sending faxes with the recipient's prior express invitation or permission, in writing or otherwise, and the only hook for liability is the failure to include precise opt-out language. And that is especially the case where there was confusion surrounding the applicability of the rule requiring that opt-out language. Indeed, because the Commission has already granted retroactive waivers to some petitioners who are situated similarly to USI, denying a waiver here would be all the more "unjust or inequitable." October 30 Order at ¶ 28.

## **CONCLUSION**

USI finds itself in the same position as those petitioners whom the Commission granted a retroactive waiver of the opt-out notice requirement as applied to solicited faxes. Specifically, it faces a lawsuit that seeks substantial damages for alleged violations of a rule that the Commission has already recognized created "confusion [and] misplaced confidence." October 30

Order at ¶ 27. Applying the opt-out notice requirement to solicited faxes under these circumstances would do more harm than good, while granting a retroactive waiver to prevent the imposition of statutory fines for inadvertent violations would “serve[] the public interest.” *Id.* USI therefore requests that the Commission grant it the same retroactive waiver of Section 64.1200(a)(4)(iv) that the Commission has already granted to other, similarly situated parties.

This 11th day of March, 2015

Respectfully submitted,

**USI, INC.**

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# EXHIBIT A

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

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P & S PRINTING LLC d/b/a MINUTEMAN PRESS,  
on behalf of itself and all others similarly situated,

Plaintiff,

-vs.-

U S I, INC. d/b/a USI, INC.,

Defendant.

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14 CV \_\_\_\_\_

Complaint

Class Action

Jury Demanded

**COMPLAINT**

Plaintiff P & S Printing LLC d/b/a Minuteman Press (“Plaintiff”), on behalf of  
itself and all others similarly situated, alleges as follows:

**INTRODUCTION**

1. Plaintiff brings this action against U S I, Inc. d/b/a USI, Inc. (“USI” or  
“Defendant”) for violating the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the  
“TCPA”) and Conn. Gen. Stat. § 52-570c. Congress enacted the TCPA in 1991 to  
prevent the faxing of unsolicited advertisements to persons who had not provided express  
invitation or permission to receive such faxes. In addition, the TCPA and regulations  
promulgated pursuant to it prohibit the sending of unsolicited as well as solicited fax  
advertisements that do not contain properly worded opt-out notices. The Connecticut  
legislature enacted Conn. Gen. Stat. § 52-570c for similar purposes.

2. Upon information and belief, Defendant has jointly and severally sent or  
caused to be sent out over five thousand (5,000) unsolicited and solicited fax  
advertisements for goods and/or services without proper opt-out notices to persons

throughout the United States within the applicable limitations period for the TCPA, which is four years. As a result, Defendant is liable to Plaintiff and the proposed Classes A and B of similarly situated persons under the TCPA.

3. Upon information and belief, Defendant has jointly and severally caused to be sent out thousands of fax advertisements for goods and/or services that were unsolicited and lacked proper opt-out notices to persons throughout Connecticut within the applicable limitations period for Conn. Gen. Stat. § 52-570c., which is two. As a result, Defendant is liable to Plaintiff and the proposed Class C of similarly situated persons under Conn. Gen. Stat. § 52-570c.

### **JURISDICTION AND VENUE**

4. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227.

5. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(1) because, upon information and belief, this is the judicial district in which any Defendant resides.

6. This Court also has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over Plaintiff's and Class C's claims under Conn. Gen. Stat. § 52-570c.

### **THE PARTIES**

7. Plaintiff is a Connecticut limited liability company with its principal place of business located at 513 Summer Street, Stamford, Connecticut 06901.

8. Upon information and belief, Defendant is a Connecticut corporation with its principal place of business located at 98 Fort Path Road, Madison, Connecticut 06443.

### **DEFENDANT'S ILLEGAL JUNK FAXES**

9. At all times relevant to this action, Plaintiff had telephone service at its

place of business located at 513 Summer Street, Stamford, Connecticut 06901. Plaintiff receives facsimile transmissions on its telephone facsimile machine at this location.

10. Upon information and belief, on or about April 22, 2014 and on numerous other dates during 2014, Defendant, without Plaintiff's express invitation or permission, arranged for and/or caused a telephone facsimile machine, computer, or other device to send unsolicited fax advertisements (the "Fax Advertisements") advertising the commercial availability or quality of any property, goods, or services, to Plaintiff's fax machine located at located at 513 Summer Street, Stamford, Connecticut 06901. A copy of the April 22, 2014 Fax Advertisement is attached hereto as Exhibit A and is incorporated into this Complaint by reference.

11. Plaintiff did not provide Defendant with express invitation or permission to send any fax advertisements to Plaintiff. The Fax Advertisements were wholly unsolicited.

12. The Fax Advertisements contain a purported opt-out notice that states: "If this fax has reached you in error and you would like to be removed from our list you can opt out here: fax us at **877-929-4920** | **Email us at faxremoval@usl-corp.com** | **call us at 800-229-9290 x 7299.**" *See, e.g.*, Exhibit A.

13. The opt-out notices on the Fax Advertisements violate the TCPA and regulations promulgated thereunder in numerous ways, including but not limited to, that the opt-out notices:

(A) fail to state that the sender's failure to comply with an opt-out request within 30 days is unlawful;

(B) fail to state that any request by the fax recipient to the sender of such fax not to send any future faxes to a telephone facsimile machine or machines

must identify the telephone number or numbers of the facsimile machine or machines to which the request relates;

(C) fail to state that a recipient's opt-out request will be effective so long as that person does not, subsequent to making such request, provide express invitation or permission to the sender, in writing or otherwise, to send such advertisements;

(D) fail to state that an opt out request from receiving future fax advertisements will only be honored if it was made to the telephone number, facsimile number, website address or e-mail address identified in the sender's fax advertisement.

14. Upon information and belief, Defendant either negligently or willfully and/or knowingly arranged for and/or caused the Fax Advertisements to be sent to Plaintiff's fax machine.

15. Upon information and belief, Defendant has, from four years prior to the date of the filing of the Complaint in this action through the present, either negligently or willfully and/or knowingly sent and/or arranged to be sent well over five thousand (5,000) *unsolicited and/or solicited* fax advertisements advertising the commercial availability or quality of Defendant's property, goods, or services, to fax machines and/or computers belonging to thousands of persons all over the United States. Upon information and belief, those fax advertisements contained a notice identical or substantially similar to the Opt-Out Notices contained in the Fax Advertisements Defendant sent to Plaintiff.

16. Upon information and belief, Defendant has, from four years prior to the date of the filing of the Complaint in this action through the present, either negligently or

willfully and/or knowingly sent and/or arranged to be sent well over five thousand (5,000) *unsolicited* fax advertisements advertising the commercial availability or quality of Defendant's property, goods, or services, to fax machines and/or computers belonging to thousands of persons throughout the United States. Upon information and belief, those facsimile advertisements contained an opt-out notice identical or substantially similar to the Opt-Out Notice contained in the Fax Advertisements Defendant sent to Plaintiff.

17. Upon information and belief, Defendant has, from two years prior to the filing of the Complaint in this action to the present, either negligently or willfully and/or knowingly sent and/or arranged to be sent thousands of *unsolicited* fax advertisements advertising the commercial availability or quality of Defendant's property, goods, or services, to fax machines and/or computers belonging to thousands of persons in Connecticut.

### **CLASS ALLEGATIONS**

18. Plaintiff brings this class action on behalf of itself and all others similarly situated under rules 23(a) and 23(b)(1)-(3) of the Federal Rules of Civil Procedure.

19. Plaintiff seeks to represent three classes (the "Classes") of individuals, each defined as follows:

Class A: All persons from four years prior to the date of the filing of the Complaint through the present to whom Defendant sent or caused to be sent at least one *solicited or unsolicited* facsimile advertisement advertising the commercial availability or quality of Defendant's property, goods, or services that contained a notice identical or substantially similar to the Opt-Out Notices in the Fax Advertisements Defendant sent or caused to be sent to Plaintiff.

Class B: All persons from four years prior to the date of the filing of the Complaint through the present to whom Defendant sent or caused to be sent at least one *unsolicited* facsimile advertisement advertising the commercial availability or quality of Defendant's property, goods, or services that contained a notice identical or substantially similar to the Opt-Out Notice on the Fax Advertisements Defendant sent or caused to be sent to Plaintiff.

Class C: All persons in the Connecticut to whom, from two years prior to the date of the filing of the Complaint to the present, Defendant sent or caused to be sent at least one facsimile advertisement without having obtained express invitation or permission to do so.

20. Numerosity: The Classes are so numerous that joinder of all individual members in one action would be impracticable. The disposition of the individual claims of the respective class members through this class action will benefit the parties and this Court. Upon information and belief there are, at a minimum, thousands of class members of Classes A, B and C. Upon information and belief, the Classes' sizes and the identities of the individual members thereof are ascertainable through Defendant's records, including Defendant's fax and marketing records.

21. Members of the Classes may be notified of the pendency of this action by techniques and forms commonly used in class actions, such as by published notice, e-mail notice, website notice, fax notice, first class mail, or combinations thereof, or by other methods suitable to the Classes and deemed necessary and/or appropriate by the Court.

22. Typicality: Plaintiff's claims are typical of the claims of the members of Class A because the claims of Plaintiff and members of Class A are based on the same

legal theories and arise from the same unlawful conduct. Among other things, Plaintiff and members of Class A were sent or caused to be sent by Defendant at least one fax advertisement advertising the commercial availability or quality of Defendant's property, goods, or services that contained a notice identical or substantially similar to the Opt-Out Notice in the Fax Advertisement that Defendant sent or caused to be sent to Plaintiff.

23. Plaintiff's claims are typical of the claims of the members of Class B because the claims of Plaintiff and members of Class B are based on the same legal theories and arise from the same unlawful conduct. Among other things, Plaintiff and the members of Class B were sent or caused to be sent by Defendant, without Plaintiff's or the Class B members' express permission or invitation, at least one fax advertisement advertising the commercial availability or quality of Defendant's property, goods, or services that contained a notice identical or substantially similar to the Opt-Out Notice in the Fax Advertisement that Defendant sent or caused to be sent to Plaintiff.

24. Plaintiff's claims are typical of the claims of the members of Class C because the claims of Plaintiff and members of Class C are based on the same legal theories and arise from the same unlawful conduct. Among other things, Plaintiff and members of Class C were sent or caused to be sent by Defendant, without Plaintiff's or the Class C members' express permission or invitation, at least one fax advertisement advertising the commercial availability or quality of Defendant's property, goods, or services.

25. Common Questions of Fact and Law: There is a well-defined community of common questions of fact and law affecting the Plaintiff and members of the Classes.

26. The questions of fact and law common to Plaintiff and Class A predominate over questions that may affect individual members, and include:



(a) Whether Defendant's sending and/or causing to be sent to Plaintiff and the members of Class A, by facsimile, computer or other device, fax advertisements advertising the commercial availability or quality of Defendant's property, goods or services that contained a notice identical or substantially similar to the Opt-Out Notice in the Fax Advertisements violated 47 U.S.C. § 227(b) and the regulations thereunder;

(b) Whether Defendant's sending and/or causing to be sent such fax advertisements was knowing or willful;

(c) Whether Plaintiff and the members of Class A are entitled to statutory damages, triple damages and costs for Defendant's conduct;

(d) Whether Plaintiff and members of Class A are entitled to multiple statutory damages per fax advertisement Defendant sent or caused to be sent to them because each fax advertisement contains multiple violations of the TCPA and the regulations promulgated thereunder?; and

(e) Whether Plaintiff and members of Class A are entitled to a permanent injunction enjoining Defendant from continuing to engage in its unlawful conduct.

27. The questions of fact and law common to Plaintiff and Class B predominate over questions that may affect individual members, and include:

(a) Whether Defendant's sending and/or causing to be sent to Plaintiff and the members of Class B, without Plaintiff's or the Class B members' express invitation or permission, by facsimile, computer or other device, fax advertisements advertising the commercial availability or quality of Defendant's property, goods, or services that contained a notice identical or substantially

similar to the Opt-Out Notices in the Fax Advertisements violated 47 U.S.C. § 227(b) and the regulations thereunder;

(b) Whether Defendant's sending and/or causing to be sent to Plaintiff and the members of Class B such unsolicited fax advertisements was knowing or willful;

(c) Whether Plaintiff and the members of Class B are entitled to statutory damages, triple damages and costs for Defendant's conduct;

(d) Whether Plaintiff and members of Class B are entitled to multiple statutory damages per fax advertisement Defendant sent or caused to be sent to them because each fax advertisement contains multiple violations of the TCPA and the regulations promulgated thereunder?; and

(e) Whether Plaintiff and members of Class B are entitled to a permanent injunction enjoining Defendant from continuing to engage in its unlawful conduct.

28. The questions of fact and law common to Plaintiff and Class C predominate over questions that may affect individual members, and include:

(a) Whether Defendant's sending and/or causing to be sent to Plaintiff and the members of Class C, without Plaintiff's and Class C's express invitation or permission, by facsimile, computer or other device, fax advertisements advertising the commercial availability or quality of Defendant's property, goods, or services, violated Conn. Gen. Stat. § 52-570(a);

(b) Whether Plaintiff and the members of Class C are entitled to statutory damages under Conn. Gen. Stat. § 52-570c(d) for Defendant's conduct;

(c) Whether Plaintiff and members of Class C are entitled to a permanent injunction under Conn. Gen. Stat. § 52-570c(d) enjoining Defendant from continuing to engage in its unlawful conduct; and

(d) Whether Plaintiff and members of Class C are entitled to attorney's fees and costs against Defendant under Conn. Gen. Stat. § 52-570c(d)..

29. Adequacy of Representation: Plaintiff is an adequate representative of the Classes because its interests do not conflict with the interests of the members of the Classes. Plaintiff will fairly, adequately and vigorously represent and protect the interests of the members of the Classes and has no interests antagonistic to the members of the Classes. Plaintiff has retained counsel who is competent and experienced in litigation in the federal courts, class action litigation, and TCPA cases.

30. Superiority: A class action is superior to other available means for the fair and efficient adjudication of the Classes' claims. While the aggregate damages that may be awarded to the members of the Classes are likely to be substantial, the damages suffered by individual members of the Classes are relatively small. The expense and burden of individual litigation makes it economically infeasible and procedurally impracticable for each member of the Classes to individually seek redress for the wrongs done to them. The likelihood of the individual Class members' prosecuting separate claims is remote. Plaintiff is unaware of any other litigation concerning this controversy already commenced against Defendant by any member of the Classes.

31. Individualized litigation also would present the potential for varying, inconsistent or contradictory judgments, and would increase the delay and expense to all parties and the court system resulting from multiple trials of the same factual issues. The conduct of this matter as a class action presents fewer management difficulties, conserves

the resources of the parties and the court system, and would protect the rights of each member of the Classes. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

32. Injunctive Relief: Defendant has acted on grounds generally applicable to the members of Classes A, B and C thereby making appropriate final injunctive relief with respect to Classes A, B and C.

**FIRST CLAIM FOR STATUTORY DAMAGES FOR VIOLATION OF THE  
TCPA**

33. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-32.

34. By the conduct described above, Defendant committed more than five thousand (5,000) violations of 47 U.S.C. § 227(b) against Plaintiff and the members of Class A, to wit: the fax advertisements Defendant sent and/or caused to be sent to Plaintiff and the members of Class A were either (a) unsolicited and did not contain a notice satisfying the requirements of the TCPA and regulations thereunder, or (b) solicited and did not contain a notice satisfying the requirements of the TCPA and regulations thereunder.

35. Plaintiff and the members of Class A are entitled to statutory damages under 47 U.S.C. § 227(b) in an amount greater than two million, five hundred thousand dollars (\$2,500,000).

36. If it is found that Defendant willfully and/or knowingly sent and/or caused to be sent fax advertisements that did not contain a notice satisfying the requirements of the TCPA and regulations thereunder to Plaintiff and the members of Class A, Plaintiff requests that the Court increase the damage award against Defendant to three times the

amount available under 47 U.S.C. § 227(b)(3)(B), as authorized by 47 U.S.C. § 227(b)(3).

**SECOND CLAIM FOR STATUTORY DAMAGES FOR VIOLATION OF THE  
TCPA**

37. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-32.

38. By the conduct described above, Defendant committed more than five thousand (5,000) violations of 47 U.S.C. § 227(b) against Plaintiff and the members of Class B, to wit: the fax advertisements Defendant sent and/or caused to be sent to Plaintiff and the members of Class B were unsolicited and did not contain notices satisfying the requirements of the TCPA and regulations thereunder.

39. Plaintiff and the members of Class B are entitled to statutory damages under 47 U.S.C. § 227(b) in an amount greater than two million, five hundred thousand dollars (\$2,500,000).

40. If it is found that Defendant willfully and/or knowingly sent and/or caused to be sent unsolicited fax advertisements that did not contain a notice satisfying the requirements of the TCPA and regulations thereunder to Plaintiff and the members of Class B, Plaintiff requests that the Court increase the damage award against Defendant to three times the amount available under 47 U.S.C. § 227(b)(3)(B), as authorized by 47 U.S.C. § 227(b)(3).

**THIRD CLAIM FOR INJUNCTIVE RELIEF FOR VIOLATION OF THE TCPA**

41. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-32.

42. Defendant committed thousands of violations of 47 U.S.C. § 227(b).

43. Under 47 U.S.C. § 227(b)(3)(A), Plaintiff and the members of Classes A and B are entitled to a permanent injunction against Defendant, prohibiting Defendant from committing further violations of the TCPA and regulations thereunder.

**FOURTH CLAIM FOR STATUTORY DAMAGES FOR VIOLATION OF CONN.  
GEN. STAT. § 52-570c(a)**

44. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-32.

45. By the conduct described above, Defendant committed numerous violations of Conn. Gen. Stat. § 52-570c(a) against Plaintiff and the members of Class C, to wit: the fax advertisements Defendant sent and/or caused to be sent to Plaintiff and the members of Class C were unsolicited.

46. Pursuant to Conn. Gen. Stat. § 52-570c(d), Plaintiff and the members of Class C are entitled to statutory damages in an amount to be determined at trial.

**FIFTH CLAIM FOR INJUNCTIVE RELIEF FOR VIOLATION OF CONN. GEN.  
STAT. § 52-570c(a)**

47. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-32.

48. By the conduct described above, Defendant committed numerous violations of Conn. Gen. Stat. § 52-570c(a) against Plaintiff and the members of Class C, to wit: the fax advertisements Defendant sent and/or caused to be sent to Plaintiff and the members of Class C were unsolicited.

49. Pursuant to Conn. Gen. Stat. § 52-570c(d), Plaintiff and the members of Class C are entitled to a permanent injunction against Defendant, prohibiting Defendant from committing further violations of the Conn. Gen. Stat. § 52-570c(d).

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of itself and the members of the Classes, requests:

A. An order certifying the Classes, appointing Plaintiff as the representative of the Classes, and appointing Aytan Y. Bellin of Bellin & Associates LLC as counsel for the Classes;

B. an award to Plaintiff and the members of Classes A and B of statutory damages in excess of \$2,500,000 for each of Classes A and B, pursuant to 47 U.S.C. § 227(b), for Defendant's violations of that statute and the regulations promulgated thereunder;

C. if it is found that Defendant willfully and/or knowingly sent and/or caused to be sent the fax advertisements alleged to classes A and/or B, an award of three times the amount of damages described in the previous paragraph, as authorized by 47 U.S.C. § 227(b)(3);

D. an injunction against Defendant prohibiting it from committing further violations of the TCPA and regulations described above;

E. an award to Plaintiff and the members of Class C of statutory damages pursuant to Conn. Gen. Stat. § 52-570c(d) of \$500 per violation of Conn. Gen. Stat. Ann. 52-570c(a) in an aggregate amount to be determined at trial;

F. an injunction against Defendant prohibiting it from committing further violations of the Conn. Gen. Stat. § 52-570c(a); and

G. such further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

Dated: White Plains, New York  
December 17, 2014

**P & S PRINTING LLC d/b/a  
MINUTEMAN PRESS, on behalf of itself  
and all others similarly situated,**

By: Aytan J. Bellin

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*Attorneys for Plaintiff and the Proposed  
Classes*



# EXHIBIT A

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